

# **Environmental Requirements for BPA-Funded Fish and Wildlife Projects**

## **Information for Project Contractors**

As a federal agency, BPA is required to meet certain environmental laws and regulations when it funds all or part of a project. BPA must work cooperatively with you, the project contractor, to identify the applicable requirements and ensure that they are met before the project is implemented. **The earlier BPA receives necessary information from you, the more efficiently the environmental process can proceed and the sooner your project can move forward.**

### **Environmental Requirements that May Apply**

This is a list of the most common environmental requirements for BPA-funded projects. Some projects may need to meet more requirements, including some not listed here, and some projects may need to meet fewer, depending on the circumstances. These requirements are explained in the following pages.

- **The National Environmental Policy Act (NEPA)** requires federal agencies to consider the potential environmental effects of proposed projects before making a final decision to fund, approve, or implement an action.
- **Public Involvement** is required under NEPA to provide an opportunity for the public to comment on federal actions that concern or affect them.
- **The Endangered Species Act (ESA)** provides for conservation of listed animal and plant species and their habitat, and specifies consultation and permitting requirements.
- **The Magnuson-Stevens Fishery Conservation and Management Act** requires consultation on activities that will adversely affect **Essential Fish Habitat (EFH)**.
- **The National Historic Preservation Act (NHPA) and Other Statutes** require an evaluation of effects on historic properties and cultural resources, and consultation with affected tribes.
- **The Clean Water Act and Other State and Local Obligations** require the protection of water resources including wetlands, riparian areas, and floodplains.
- **Land Audits** identify hazardous waste sites.
- **Water Rights** are needed for projects that use surface or groundwater, even temporarily.

### **Things to Consider**

- Your BPA COTR will submit your Statement of Work to BPA's environmental group for review as part of the contracting process. A BPA Environmental Specialist will be assigned to work with you and will let you know which requirements apply to your proposed project.
- If you are working with another federal agency, some of these requirements already may have been met through their processes; your BPA Environmental Specialist can make that determination.
- The cost of meeting environmental requirements must be included in your project budget; your BPA COTR or Environmental Specialist can help you with these cost estimates.
- The time needed to meet these requirements varies by project; it depends on the responsiveness, workload and statutory obligations of the agencies BPA needs to consult with, and on the complexity of the environmental issues. Estimates are given below for each requirement.

## National Environmental Policy Act

Various kinds of documents can provide NEPA coverage for your proposed project. The following paragraphs describe three general types of projects—research projects, watershed management and wildlife mitigation projects, and fish production projects—and the NEPA document normally required for each. Your BPA Environmental Specialist will determine the NEPA document that is appropriate for your project and the kind and level of information you will need to provide.

### Project Type 1: Research

Typical Activities	NEPA Document Type	Time Required
Redd counts, stream surveys, fish collection and handling, PIT-tagging	Categorical Exclusion (CX)	One month, unless additional time is required for such requirements as ESA consultation or permits

#### Details

**NEPA document:** Research projects that are directly related to the conservation of fish and wildlife resources and that involve only negligible habitat destruction or population reduction typically are covered by a Categorical Exclusion (CX).

**Typical Process:** For a project to qualify for a CX, your BPA Environmental Specialist must determine that the proposed actions will not adversely affect environmentally sensitive resources such as ESA-listed species, floodplains, wetlands, and historic or cultural resources. You will need to provide information about your project to the BPA Environmental Specialist, who will write the CX. You will receive a copy of the CX for your files. Public involvement usually is not required for a CX.

### Project Type 2: Watershed Management and Wildlife Mitigation

Typical Activities	NEPA Document Type	Time Required
Fish passage enhancement, land and water right acquisition, wetland and riparian area enhancement, irrigation diversion screening and modifications, vegetation management, habitat creation	Supplement Analysis (SA) (if your project is within the scope of an existing EIS)	Usually two to four months, but additional time is often necessary for ESA consultation, historic and cultural resource consultation, fieldwork, etc.

#### Details

**NEPA document:** BPA's existing Wildlife Mitigation Program or Watershed Management Program Environmental Impact Statements (EISs) analyzed the effects of many of these types of projects. If your proposed actions are within the scope of either of these EISs, a Supplement Analysis (SA) to one of the existing EISs typically will be prepared to provide NEPA documentation.

**Typical Process:** Your BPA Environmental Specialist will determine if your actions are covered by one of the existing EISs. Appendix A of each EIS lists the types of actions covered. These appendices can be found at:

[http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/WildlifeMitigation\\_EIS0246](http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/WildlifeMitigation_EIS0246)

or: [http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/WatershedManagement\\_EIS0265](http://www.efw.bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/WatershedManagement_EIS0265).

If your project is consistent with one of the EISs, your BPA Environmental Specialist will ask you to complete a NEPA Compliance Checklist that documents compliance with the conditions of the appropriate EIS. This includes documentation of how you complied with related ESA, EFH, public involvement, historic and cultural resource obligations, and mitigation measures. Your BPA Environmental Specialist can help you fill out the NEPA Compliance Checklist and will review the checklist to determine if additional information is needed. When the NEPA Compliance Checklist is complete, the project contractor must sign the checklist and submit it to the BPA Environmental Specialist, who will then prepare the SA. You will receive a copy of the SA for your files.

### Project Type 3: Fish Production

Typical Activities	NEPA Document Type	Time Required
Fish hatchery construction and operation, supplementation, acclimation, outplanting, transportation	Environmental Assessment (EA) or Environmental Impact Statement (EIS)	EAs usually take about 9 months, EISs about 18 months to complete.

#### Details

**NEPA document:** Fish production projects typically are evaluated in an Environmental Assessment (EA) if no significant impacts are expected, or in an Environmental Impact Statement (EIS) if significant environmental impacts are expected. “Significance” of impacts is defined in the regulations for implementing NEPA and is determined by a combination of such factors as the sensitivity of the resources affected, the severity of the effects, the degree to which the effects might be highly controversial or involve unique or unknown risks, and whether the proposed action is related to other actions with individually insignificant but cumulatively significant impacts.

**Typical Process:** EAs and EISs must meet certain legal and regulatory standards, including timelines for public involvement and document distribution. EAs and EISs describe the purpose and need for a project, evaluate alternatives, document existing conditions, analyze potential environmental impacts, and may include mitigation measures. Your BPA Environmental Specialist will determine whether an EA or EIS is required and will work with you to develop a plan of action.

### Public Involvement

In most instances, BPA must notify potentially interested and affected parties of a proposed project and consider their concerns in project planning and decision-making. Interested and affected parties may include local (city or county) planners and government officials, nearby landowners, affected tribes, local watershed groups, irrigations districts, and state and federal fish and wildlife agencies.

**Process:** The key objective is to provide timely and meaningful opportunities for these individuals and groups to contribute to the decision-making process, before project plans are too advanced to be changed. Project contractors should work with their BPA Environmental Specialist to develop a public involvement strategy suitable for the project. Techniques to consider include mailings, public notices, public meetings or workshops, Internet postings, radio advertisements, stories or ads in the local newspaper, and one-on-one meetings with interested parties.

## Endangered Species Act

Depending on the nature of your project, ESA requirements typically are met through either Section 7 consultation or a Section 10 permit. Federal agencies are required to conduct Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration – National Marine Fisheries Service (NOAA Fisheries) on activities they fund, permit or carry out that may cause incidental take of ESA-listed species. A Section 10 permit is required for activities that result in the direct take of ESA-listed species for scientific purposes. “Take” is defined very broadly under the ESA: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct. Other methods for meeting ESA requirements fall under the provisions of Section 6, Section 4(d), and Hatchery and Genetic Management Plans; your BPA Environmental Specialist will provide additional information on these as needed.

Process Type	When Required	Required Documentation
Section 7 consultation	When a federal agency funds, permits, or implements an action that affects a listed species (the project may inadvertently result in “take” of a listed species, including indirect take).	Biological Assessment (BA) or HIP BO Consistency Form
Section 10 permit	Activities that result in the direct take of ESA-listed species for scientific purposes (the project deliberately targets the listed species and will result in take).	Permit application

### Section 7 Consultation

**Process:**

**Step 1:** Determine which ESA-listed animal and plant species and habitat may be present in the project vicinity.

**Step 2:** Unless it is clear that your project will have no effect on these species and habitat, a Biological Assessment (BA) must be prepared that documents the potential effects of your project on listed species and/or habitat. Usually, the project contractor’s biologist drafts the BA. Your BPA Environmental Specialist can provide guidance on preparing a BA and must review the draft.

**Step 3:** Once the BA is complete, your BPA Environmental Specialist will submit it to USFWS and/or NOAA Fisheries to initiate Section 7 consultation. Based on the information in the BA, BPA will make effect determination(s) in the letter transmitting the BA; the determinations establish the level of Section 7 consultation as described below.

- If the project may affect but is not likely to adversely affect listed species, informal Section 7 consultation normally will suffice. Informal consultation concludes with a letter of concurrence from the agency(s).
- For projects that are likely to adversely affect listed species, formal Section 7 consultation is required. Formal consultation concludes with the issuance of a Biological Opinion (BO) from the agency(s). A BO will include non-discretionary Terms and Conditions that the project contractor and BPA are required to implement.

In August 2003, BPA completed Section 7 consultation with NOAA Fisheries on 27 habitat improvement activities and was issued the Habitat Improvement Program Biological Opinion (HIP BO) – see BPA’s Environment, Fish and Wildlife web page at <http://www.efw.bpa.gov>. **Section 7 coverage for proposed anadromous fish projects can be provided by the HIP BO if your project:**

- meets the description of one or more of the 27 categories of actions;
- has effects that are consistent with the HIP BO; AND
- can meet all of the applicable Terms and Conditions from the HIP BO.

To determine if the HIP BO can be used to meet your Section 7 obligations, you must complete a HIP BO Consistency Form. Your BPA Environmental Specialist will provide you with the Consistency Form along with a custom report tailored to your project that will assist you in completing the form. **For projects that use the HIP BO but affect listed species other than anadromous fish** (such as bull trout, bald eagles or listed plant species), **Section 7 consultation with USFWS will still be required.**

**Time:** Time will vary depending on the complexity of the project and its impacts. Time is needed to:

- identify species and potential habitat in the area;
- carry out a field survey for listed species (if needed) during the appropriate time of year;
- prepare and submit the BA; and
- respond to possible requests for additional information from the agency(s) once the BA is submitted.

**NOAA/USFWS response times:**

- For informal consultation, agencies have 30 days to respond with a letter of concurrence once the BA is received.
- For formal consultation, agencies have 135 days to respond with a BO once they determine that all needed information has been received.
- The HIP BO process will take approximately one month to complete once a Consistency Form has been submitted to the BPA Environmental Specialist; additional time may be needed to meet the Terms and Conditions that apply to the project.

### **Section 10 Permit**

**Process:** If a project involves activities that will result in the direct take of listed species for scientific purposes, the project contractor must obtain a Section 10 Permit from USFWS and/or NOAA Fisheries. Your BPA Environmental Specialist can help you complete this permit application.

**Time:** NOAA Fisheries requests that applications be submitted **at least 4 months prior to the start of proposed activities.** Actual processing could take less than 4 months but is more likely to take longer.

### **Essential Fish Habitat**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that federal agencies consult with NOAA Fisheries on any activity that will adversely affect Essential Fish Habitat (EFH). EFH includes those waters and substrate necessary for the spawning, breeding, and growth of certain species of fish covered by a federal fisheries management plan. The species that must be addressed are groundfish, coastal pelagic species, chinook salmon, coho salmon, and Puget Sound pink salmon. The EFH for groundfish and coastal pelagic species includes marine and estuarine waters. The EFH for pacific salmon includes streams, lakes, ponds, wetlands, and other water bodies currently or historically accessible to salmon, except areas upstream of certain impassable human-made barriers.

**Process:** Most activities in or near EFH require consultation, even if the goal of the project is to improve habitat. Short-term adverse impacts to EFH such as an increase in turbidity are usually unavoidable. An EFH Assessment report should be included in your BA unless the project is covered under the HIP BO, which includes EFH consultation. An EFH Assessment template is available at <http://www.nwr.noaa.gov/1habcon/habweb/default2.html>. Your BPA Environmental Specialist can help you prepare the EFH Assessment, and will review and submit it to NOAA Fisheries.

**Time:** Time varies depending on the timeline for the concurrent Section 7 consultation or HIP BO process (see above).

## National Historic Preservation Act and Other Statutes

Section 106 of the NHPA requires federal agencies to consult with the state and tribes on the effects of most federal undertakings on historic properties and cultural resources. Several other statutes govern BPA's responsibilities for cultural resources, including the American Indian Religious Freedom Act and the Native American Graves Protection and Repatriation Act. Your BPA Environmental Specialist will provide information on these additional statutes as necessary.

**Process:** The goal of Section 106 consultation is to identify historic properties and cultural resources potentially affected by a federal undertaking, assess its effects, and seek ways to avoid, minimize or mitigate any adverse effects to these resources.

**Step 1:** The BPA Environmental Specialist will work with the project contractor to **identify the Area of Potential Effect (APE)** for the project, including new access roads, staging areas, etc. BPA's archaeologist will initiate the Section 106 consultation process by submitting a letter to the State Historic Preservation Office (SHPO) and the relevant tribes (or the Tribal Historic Preservation Officer (THPO) for activities on tribal lands where a THPO has been designated). The letter describes the APE and requests any information they may have about historic properties or cultural resources in the project area. The SHPO, THPO, and tribes have **30 days to respond**.

**Step 2:** The project sponsor must **determine if any historic properties and cultural resources are present in the APE**. A survey completed by a qualified archaeologist is required in most cases. BPA has a pool of contractors that can do this type of work; project contractors may have partners such as the Natural Resource Conservation Service or tribes who also are qualified to do this work. A survey report must be submitted to the BPA Environmental Specialist for review.

**Step 3:** Based on the survey findings, the BPA archaeologist will **determine whether historic properties or cultural resources will be affected** by the project. The BPA archaeologist will submit his or her determinations and the survey report to the SHPO, THPO, and tribes, who have **30 days to concur** with BPA's determination **or to request additional information**. If historic properties or cultural resources will be adversely affected by a project, additional consultation is required. The BPA Environmental Specialist and BPA's archaeologist will provide guidance.

**Time:** Time will vary depending on the complexity of the project and its impacts. Time is needed for contracting for the survey; conducting fieldwork; report writing; and consultations with the SHPO, THPO, and tribes. Ground surveys cannot be conducted with snow on the ground, which can cause delays.

## Clean Water Act and Other State and Local Obligations

Projects that involve aquatic resources, including rivers/streams, wetlands, riparian areas, and floodplains, require various federal, state, tribal, and local permits and approvals, which vary by state.

**Process:**

- **Section 404** of the Clean Water Act (CWA) requires a permit from the U.S. Army Corps of Engineers to place fill in waters of the U.S., including wetlands.
- **Section 401** of the CWA requires a water quality certification from the state (and in some cases, from tribes) on federal permits that will result in a discharge to surface waters.
- Other federal processes, state and local permits, and approvals may be required for work instream or in riparian areas, floodplains and wetlands.

The project contractor usually obtains permits and approvals; your BPA Environmental Specialist can provide assistance in meeting these requirements. Federal, state and local permitting processes are combined in Washington and Oregon and involve only one application. In other states, submitting applications to more than one agency may be necessary.

**Time:** Variable. The process can take several months for the multi-agency reviews.

## Land Audit

If a project involves acquisition of real property, easements, land leases, or major ground disturbing activities, a Phase I Environmental Site Assessment must be completed. The Phase I Assessment determines whether any hazardous substances or petroleum products are present or likely to be present on a property.

**Process:** A Phase I Assessment can be initiated by contacting your BPA COTR or Environmental Specialist. The requests are then forwarded to BPA's Pollution Prevention Group for completion. A Phase I Assessment typically includes an on-site inspection; review of existing data; interview with the owner or project personnel; and review of federal, state, and local records. Findings, conclusions, and recommendations are provided in report form. If environmental sampling or further investigation is required, a scope of work and cost estimate will be provided. If a non-BPA entity previously completed a Phase I Assessment, BPA's Pollution Prevention Group is required to review their report.

**Time:** A Phase I Assessment usually takes less than 30 days. A Phase I Assessment should be started as early as possible to avoid delays if it appears that hazardous substances are present. If hazardous substances are found, BPA will decide whether to proceed with a Phase II assessment or modify the project.

## Water Rights

If a project includes the use of surface or groundwater (even for a flow-through system), or modification or transfer of an existing water right, a permit or approval must be obtained from the appropriate state agency.

**Process:** Requirements vary by state. The project contractor normally obtains permits and approvals; your BPA Environmental Specialist can provide assistance on these requirements.

**Time:** Water rights permits and permit modifications can take more than a year to obtain.

### Contact For Additional Information:

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